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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

J.L.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F079297

(Super. Ct. No. 06CEJ300163-3)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. William Terrence, Judge.

Nichole M. Verville, for Petitioner.

No appearance for Respondent.

Daniel C. Cederborg, County Counsel, and Kevin A. Stimmel, Deputy County Counsel, for Real Party in Interest.

* Before Franson, Acting P.J., Smith, J. and DeSantos, J.

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Jamie L. (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.450) from the juvenile court's May 14, 2019, dispositional orders removing her infant son, Damian L., from her custody and setting a Welfare and Institutions Code section 366.26¹ hearing scheduled for August 27, 2019. She contends there was insufficient evidence to take temporary custody of Damian at the detention hearing on February 5, 2019, under section 319 and to order him removed under section 361 at the dispositional hearing. We deny the petition.

PROCEDURAL AND FACTUAL BACKGROUND

Mother gave birth to Damian in January 2019 while in her second week of court-ordered residential drug treatment at Fresno First Women's Residential Treatment Program (Fresno First). She was ordered into the program as a condition of probation for possession of methamphetamine with the intent to sell or distribute.

Hospital staff contacted the Fresno County Department of Social Services (department) because mother was not bonding with Damian and did not have baby supplies. She admitted a long history of methamphetamine use but claimed she and Damian were "clean," which the toxicology tests confirmed. Mother was married to William L., but had not been in a relationship with him for years as he was incarcerated. She identified another man, also named "Damian," as Damian's father but had no contact information for him.

Mother also had a prior child welfare case stemming from the death of her two-month-old son, J.B., in 2006 from neglect. She was using methamphetamine at that time and was on probation. She and her three minor children were living in squalor and voluntary family maintenance services had not improved the situation. On October 23, 2006, after suffering from vomiting and diarrhea for approximately a week without

¹ Statutory references are to the Welfare and Institutions Code.

medical treatment, J.B. was transported to the hospital. He was not breathing, had no pulse, and was profusely hemorrhaging in both eyes. After resuscitative efforts failed, he was pronounced dead. The pathologist reported J.B. had obvious signs of dehydration and opined his cause of death was secondary to dehydration caused by severe diarrhea. The doctor further noted medical neglect might have played a role in the baby's death. Damian's five- and two-year-old siblings, N.L. and H.S., were removed from mother's custody and she was denied reunification services. The siblings were eventually adopted.

Mother explained to Ramon Garcia, the investigating social worker, that she was released from custody on January 2, 2019, after spending five months in jail. She reported to her probation officer on January 8 and told him she would test "dirty." He took her into custody and she entered Fresno First the following day. The staff at Fresno First moved her to a private room anticipating she would return with the baby to the facility. She explained lack of housing was a problem for her. She was homeless on the streets before her incarceration. She suffered from depression and anxiety and was prescribed psychotropic medication but had not taken it for "some time."

Garcia told mother the department was concerned about Damian's safety if left in her care. She abused methamphetamine, was mentally unstable, and medically neglected J.B., resulting in his death. In addition, she was free to leave Fresno First at will. Mother denied she would leave because she would get "locked up." She told Garcia she completed a substance abuse program in 2006 and two others afterward. Garcia explained her continuing drug use following successful treatment was further indication Damian would be at risk in her care and may result in a denial of reunification services.

Garcia asked mother whether there was anyone with whom she would like Damian placed. She identified her mother, Fresno First, and her church family, but did not want her mother to know her situation. She then mentioned a female she befriended at a park during an outreach but did not know the woman's name or how to contact her. Asked

why she was having difficulty bonding, she explained that she was in pain and asked the nurse to put Damian in the nursery.

The department placed Damian in protective custody and filed a dependency petition on his behalf pursuant to section 300, alleging mother's methamphetamine use and neglect of J.B., resulting in death, placed Damian at a substantial risk of harm. (§ 300, subds. (b)(1), (f) & (j).) The petition identified William as Damian's presumed father and "Damian" as his alleged father.

In its report for the detention hearing, the department informed the juvenile court it was not offering mother services pending the disposition of the case because it was assessing her for a bypass of reunification services.

Mother objected to Damian's removal, arguing Damian should have been placed with her at Fresno First. At a contested detention hearing on February 5, 2019, Ramon Garcia testified he did not consider placing Damian with mother at Fresno First for the reasons he explained to her. Asked what efforts he made to prevent removal, he cited his discussion with mother about placement options other than with her.

Aurora Cuenca-Bejarano, a staff member from Fresno First, testified the program provided residential substance abuse treatment for women with children as well as parenting and anger management classes and therapy. Fresno First is staffed 24 hours a day with employees who are mandated reporters. Cuenca-Bejarano acknowledged mother could leave the program at any time. However, staff would be required to report her departure.

Mother's attorney argued the department made no effort to prevent Damian's removal because it refused to consider placing him with mother at Fresno First. The juvenile court disagreed, pointing to Garcia's conversation with mother that Damian could have been placed with her at Fresno First and his attempt to identify an appropriate placement for Damian with her assistance.

The juvenile court found prima facie evidence to order Damian detained and ordered the department to offer mother random drug testing, mental health services and weekly supervised visitation. The court set a jurisdictional hearing for March 5, 2019. The department placed Damian in foster care.

On March 5, 2019, mother's attorney requested a contested jurisdictional/dispositional hearing. William's attorney informed the court William provided a copy of the judgment dissolving his marriage to mother before Damian was conceived. His attorney asked to be dismissed from the case. The court set a hearing on parentage for April 23 and a contested jurisdictional/dispositional hearing for May 14 (combined hearing).

On April 10, 2019, mother met with departmental staff regarding reunification services. She said she began using methamphetamine 18 years before at the age of 18. At 19, she stopped using methamphetamine while pregnant with N.L., but resumed use in February 2002, a couple of months after he was born. She stopped again when she discovered she was pregnant with H.S., but resumed a month after the child's birth. She did not remember being offered voluntary family maintenance services in August 2004, but recalled being asked to clean her home and take the children to the doctor and dentist. She was using methamphetamine at that time but hid it from the social workers. J.B. was born in August 2006. Mother used methamphetamine during her pregnancy with him and until he died on October 23, 2006. On the day he died, she had returned home from taking him to get his shots. She went to sleep and when she woke up he was dead. She said he was not sick long before he died, and she was giving him an electrolyte replacement. A week later, she entered Comprehensive Addiction Program and completed the program. She was sober for two years and began using methamphetamine again in 2008 around the time her parental rights to N.L. and H.S. were terminated. She used methamphetamine on and off since then and was arrested in May 2018 for possession of drugs and a pipe. She was ordered to participate in drug treatment but did

not comply. She was incarcerated in September 2018 and remained in jail until January 2019. Upon her release, she used methamphetamine and was arrested again before being released to Fresno First on January 9, 2019.

Mother believed it was in Damian's best interest to be placed with her because she wanted to care for him and was motivated to remain sober. She was applying for governmental housing. She maintained regular contact with her sponsor and was treating her mental illness by taking medication. She knew that if she left Fresno First without housing, she would relapse. She also knew she would go to jail and she did not want to be on the run anymore. She had tried to leave the program before but decided against it.

The department reported mother remained in Fresno First and consistently tested negative for drugs. She visited Damian weekly at the department's visitation center. Her visits with him were appropriate and there were no concerns. However, the department opined mother's prospects of reunifying with Damian were poor and recommended the juvenile court deny her reunification services on multiple statutory grounds, based on her role in J.B.'s death, extensive and chronic drug use and resistance to treatment, and loss of her parental rights to Damian's siblings. (§ 361.5, subd. (b)(4), (11) & (13).) It also recommended the court deny William reunification services because he did not respond to the department's correspondence or request services or placement (§ 361.2, subd. (a)) and "Damian," the alleged father, because he was not entitled to them. (§ 361.5, subd. (a).) His whereabouts remained unknown.

On April 23, 2019, the juvenile court amended the petition to exclude William and relieved his attorney. On April 28, mother received certificates evidencing her completion of Fresno First's Nurturing Parenting class and her perfect attendance in the class.

In a letter dated May 8, mother's primary counselor at Mental Health Systems, Fresno First, Denise Roman, described mother's progress at Fresno First and the support she was receiving there. Mother was working on her core issues such as "[Substance

Abuse] education, Relapse Prevention, Seeking Safety, Helping Women Recover, Domestic Violence, Mind Over Mood, Codependency, Nurturing Parenting and Treatment Planning.” In addition to completing her parenting course, she met with her counselor once a week for individual therapy. She was working on identifying her emotional cues and coping skills. She attended two 12-Step meetings each week and Celebrate Recovery, another form of the 12-Step program. She developed a support system with her pastor and his wife and consistently tested negative for drugs while at Fresno First. She was helpful and open to sharing in groups. She was motivated and striving to live a different lifestyle of long-term sobriety. She was inquiring about the Evangel Home, a Christian-based two-year sober living facility. She was working with a parent support partner and a child development specialist to prepare her to take custody of Damian. Ms. Roman stated the staff at Fresno First worked with social workers to coordinate services for their clients and were dedicated to helping women recover from alcohol and drug addiction and treat co-occurring mental health issues.

The juvenile court conducted the contested combined hearing on May 14. Social worker Carla Aguilar testified the department did not consider placing Damian with mother at Fresno First after the detention hearing because the department’s recommendation was to deny her reunification services. She did not believe mother’s three to four months of sobriety in the controlled environment at Fresno First evidenced her ability to maintain long-term sobriety or justified providing her reunification services.

Mother testified her sobriety date was January 9, 2019, the day she entered Fresno First. She completed Fresno First and was residing at Evangel Home. She planned to live there for nine months, although she could live there for two years. Damian could live with her there. She acknowledged her responsibility for J.B.’s death and was committed to remaining sober. She had more people supporting her sobriety this time.

Mother’s attorney objected to the juvenile court finding jurisdiction, arguing the only evidence mother used methamphetamine was her admission she used on January 8,

2019. One-time use, counsel argued, was insufficient to support a true finding under section 300, subdivision (b) as well as the counts which relied on such a finding, i.e., those alleged under subdivisions (f) and (j). As to disposition, counsel argued there was insufficient evidence to support a removal order because placing Damian with mother was an alternative to removal. Counsel objected to the applicability of the bypass provisions without arguing the evidence and asked the court to find reunification services would serve Damian's best interest.

The juvenile court sustained the petition in its entirety based on all the evidence, including the prior dependency case of which it took judicial notice. The court rejected counsel's argument mother used methamphetamine once on January 8, 2019, but stated even if that were true, the court would still find a basis for jurisdiction based on mother's history and struggle with methamphetamine use. The court found mother was fully aware of the effect that methamphetamine had on her and her unborn children as evidenced by the fact that she stopped using it while pregnant with Damian's siblings. The court gave great weight to her admission she used methamphetamine on or about January 8 or 9 of 2019. The court found clear and convincing evidence supported application of the bypass provisions and that ordering family reunification services was not in Damian's best interests. The court stated:

"The history of [mother's] use is not outweighed by her current efforts, despite her current efforts being genuine. Her extensive history of methamphetamine [is] just too much for this court to find ... it would be in Damian's best interest to grant family reunification services in this case. And this court will not do that. [¶] It is evident that [mother] enjoys spending time with Damian and that visits do appear to be positive However, this court does not find a significant enough bond based on the evidence that was presented in this case that this fact finder could conclude the bond is so strong that it's in the minor's best interests to order family reunification services."

The juvenile court ordered Damian removed from mother's custody, denied her reunification services as recommended, and set a section 366.26 hearing for August 27, 2019.

DISCUSSION

Mother's contention on appeal is that Damian could have been safely placed with her at Fresno First. However, the department failed to evaluate and rule out that option and thus, the juvenile court's orders detaining and removing Damian are error and require reversal. Real party in interest argues the court's dispositional orders render any challenge to the court's order detaining Damian moot. Mother also reasserts the arguments her attorney made at trial² that there was insufficient evidence to support jurisdiction and a denial of reunification services, but does not develop the arguments. We disagree the detention order is moot, affirm the court's detention and removal orders, and consider the arguments not developed abandoned.

A. Substantial Evidence Supports the Detention Order

Section 319 governs the detention hearing and requires the juvenile court to release the child to parental custody, unless it finds a prima facie showing the child is described by any of the subdivisions of section 300, continuing the child in the parent's home is contrary to the child's welfare, and as relevant here, there is a substantial danger to the physical health of the child and there are no reasonable means by which the child's physical health may be protected without removing the child from the parent's custody. (§ 319, subd. (c)(1).)

The juvenile court must also make a determination on the record, referencing the social worker's report or other evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his home. (§ 319, subd. (f)(1).) Where, as here, the child's parent is enrolled in a substance abuse

² Mother's trial counsel also represents her on this appeal.

treatment facility that allows a child to be placed with the parent, subdivision (f)(4) of section 319 requires the court to specify the factual basis on which it determined return of the child to parental custody would pose a substantial risk of danger to the child's physical or emotional well-being.³

Mother contends the juvenile court violated subdivision (f)(4) of section 319 because it failed to specify the facts on which it decided not to place Damian with her at Fresno First. The only fact it cited, she argues, was contained in the detention report and pertained to Garcia's inquiry about mother's "circle of support and the names of anyone who could take placement of the child." Other placement options, she contends, do not address whether Damian could have been placed with her.

Real party in interest contends the juvenile court's decision to detain Damian is moot considering its subsequent decision to remove Damian from mother's custody at the dispositional hearing. Reversal of the detention order, it asserts, would have no practical effect. Real party refers to the fact that the court's decisions to detain and remove a child are based on essentially the same finding at the detention and dispositional hearings, albeit by a different standard of proof. Specifically, in order to detain a child, the court

³ Section 319, subdivision (f)(4) provides:

"In order to preserve the bond between the child and the parent and to facilitate family reunification, the court shall consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent. The fact that the parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent shall not be, for that reason alone, prima facie evidence of substantial danger. The court shall specify the factual basis for its conclusion that the return of the child to the custody of his or her parent would pose a substantial danger or would not pose a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child."

must find prima facie evidence there is substantial danger to returning the child to parental custody and “there are no reasonable means by which the child’s physical or emotional health may be protected without removing the child from the parent’s ... physical custody.” (§ 319, subd. (c)(1).) The standard of proof at the dispositional hearing is clear and convincing evidence. There the court must find a substantial danger exists in returning the child to parental custody and there are “no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s ... physical custody.” (§ 361, subd. (c)(1).)

We fail to see how the temporary removal of a child at the initial stages of dependency proceedings (i.e., detention) is rendered moot by a subsequent removal when the findings on which the orders were made are cognizable on the same appeal and nothing has occurred in the interim to change the child’s out-of-parental-custody status. Further, the case real party cites to support its contention the detention order is moot, *In re Raymond G.* (1991) 230 Cal.App.3d 964, is unavailing. In *Raymond G.*, the child was detained but returned to parental custody at the jurisdictional hearing after the juvenile court found the allegations were not true and dismissed the case. The father appealed the detention order. The court of appeal concluded the issue of detention was technically moot but addressed it, concluding it was capable of repetition yet evading review. (*Id.* at pp. 966–967.)

Here, Damian remained out of mother’s custody throughout the proceedings and she preserved the detention order by also appealing the dispositional removal order. Consequently, the issue of the detention order is not moot. Even if it were, we have discretion to review it and do so in this case. (*In re William M.* (1970) 3 Cal.3d 16, 23–24, fn. 14.)

When the sufficiency of the evidence to support a finding or order is challenged on appeal, we review the record to determine if substantial evidence supports the trier of fact’s conclusion. In so doing, we review the record in the light most favorable to the

court's determinations and draw all reasonable inferences in support of the court's findings and orders. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We review the juvenile court's findings and orders for substantial evidence, resolving all conflicts in favor of the court, and indulging in all legitimate inferences to uphold the court's ruling. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378.) On a substantial evidence review, we do not determine whether the record contains substantial evidence to support the finding appellant contends should have been made; we consider only what evidence (contradicted or uncontradicted) was before the trial court at the time of the ruling and determine whether it was substantial, and if so, whether it supported the finding actually made. (*People v. Sy* (2014) 223 Cal.App.4th 44, 63.) Further, we will "infer a necessary finding provided the implicit finding is supported by substantial evidence" (*In re S.G.* (2003) 112 Cal.App.4th 1254, 1260) and uphold the court's decision if it is correct on any basis, even if the stated reasons are erroneous or incomplete. (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1249–1250.)

We disagree the juvenile court failed to set forth a factual basis for determining Damian could not be safely placed with mother at Fresno First. In ruling, the court rejected counsel's argument Garcia made no effort to prevent Damian's removal, stating counsel's argument "completely contradict[ed] the evidence that was received in the detention report, as well as the evidence that was received in testimony here." Thus, the court impliedly relied on Garcia's testimony that the department considered the propriety of placing Damian with mother at Fresno First but decided against it because of her chronic methamphetamine use, mental health issues, homelessness and ability to leave Fresno First whenever she wanted. Such evidence supports the court's finding the department made reasonable efforts to prevent Damian's removal by assessing the only alternative, i.e., Fresno First, and its order detaining Damian from mother's custody.

B. Substantial Evidence Supports the Removal Order

“After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing, the court must decide where the child will live while under the court’s supervision.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169.)

A juvenile court may remove a child from a parent with whom he resides only if the court finds, by clear and convincing evidence, that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [child] if the [child] were returned home, and there are no reasonable means by which the [child’s health and safety] can be protected without removing the [child] from the ... parent’s ... physical custody.” (§ 361, subd. (c)(1).)

“A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] ‘The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ [Citation.] The court may consider a parent’s past conduct as well as present circumstances.” (*In re N.M., supra*, 197 Cal.App.4th at pp. 169-170.)

Mother contends there was no evidence presented at the dispositional hearing that placing Damian in her custody at Fresno First would place him at a substantial risk of harm. Rather, she asserts, the evidence points to a conclusion he would be safe with her there. Specifically, she points to evidence she completed substance abuse treatment, maintained her sobriety, consistently visited Damian, and developed a parent-child bond with him. Therefore, she argues, Fresno First was a reasonable alternative to removal and the court’s contrary finding was error. We disagree.

Though mother achieved sobriety through Fresno First and maintained it for approximately four months, her drug history was extensive and she had yet to test her

sobriety outside the confines of Fresno First’s structured environment. In addition, the consequences of mother’s drug use had dire consequences in the past and nothing stood in the way of her leaving Fresno First with Damian vulnerable, and with nowhere to go. The court declined to take that risk and the evidence supports its decision.

C. Challenges to the Jurisdictional Findings and Denial of Services Orders Are Abandoned

“[F]ailure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal. In *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, an appellant stated an issue but made no argument with respect to it. The Court of Appeal there held: ‘Conspicuous by its absence in plaintiff’s brief is any argument, statement, comment, citation, authority or reference to this stated issue. “ ‘Contentions supported neither by argument nor by citation of authority are deemed to be without foundation, and to have been abandoned.’ ” [Citations omitted.]” [Citation.] Nor is an appellate court required to consider alleged error where the appellant merely complains of it without pertinent argument.’ ” (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119–1120.)

Mother reasserts her challenge to the sufficiency of the evidence supporting the juvenile court’s jurisdictional findings and denial of reunification services made at the contested combined hearing but fails to develop the arguments in her petition. To the extent she intended to raise the issues on this appeal, we consider them abandoned.

DISPOSITION

The petition for extraordinary writ is denied. This court’s opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.